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13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**
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16
17 LYCURGAN, INC. d/b/a ARES
ARMOR,

18 Plaintiff,

19 v.

20 B. TODD JONES, in his official
capacity as Head of the San Diego
Bureau of Alcohol, Tobacco, Firearms
21 and Explosives; and DOES 1-10,
Defendants.
22

CASE NO. 14-CV-1679 JLS (BGS)
9TH CIRCUIT No. 15-55228

**JOINT MOTION FOR EXTENSION
OF BRIEFING SCHEDULE ON
DEFENDANT'S MOTION
FOLLOWING DECISION IN THE
COURT OF APPEALS FOR THE
NINTH CIRCUIT.**

Judge: Hon. Janis L. Sammartino
Dept.: 4A

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25 On August 5, 2015, Defendant B. Todd Jones filed a Motion to Dismiss
26 for Lack of Jurisdiction. [ECF 39] Thereafter, the Court issued an Order Setting
27 Briefing Schedule on August 10, 2015 [ECF 40]. Plaintiff was ordered to file a
28 response to the motion on or before September 3, 2015. Defendant's reply, if any,

1 was due on or before September 17, 2015. Thereafter, the parties jointly moved
2 for further extension of the briefing schedule, which resulted in an opposition date
3 of September 24, 2015, a reply date of October 8, 2015, and a hearing date of
4 October 22, 2015. [ECF 43.]

5 As pointed out in the motion to dismiss, there is an appeal docketed in the
6 Ninth Circuit Court of Appeals, case number 15-55228 arising from the dismissal,
7 and subsequent denial of the new trial motion in the present case.

8 On August 18, 2015 the clerk of the court of appeal issued an order to show
9 cause why the appeal should not be dismissed in light of the concurrent activity in
10 the district court. The Court of Appeal ordered Lycurgan to choose a voluntary
11 dismissal, or if not – a briefing why the court had jurisdiction in light of the filing
12 of the amended complaint. [Doc. 41.] The Court of Appeal allowed the
13 Government ten days after Lycurgan’s briefing to respond.

14 On September 8, 2015, Lycurgan submitted its briefing in the Court of
15 Appeal regarding appellate jurisdiction. The Government elected not to respond.
16 Thus, the matter of appellate jurisdiction, which directly relates to the
17 Government’s motion to dismiss here, is before the Court of Appeal.

18 On September 24, 2015, the parties jointly moved for an extension of time
19 to file the opposition in light of the pendency of the Court of Appeals decision.
20 [Doc. 44.] On September 25, 2015, the court granted the motion. [Doc. 45.]

21 October 22, 2015, the parties again jointly moved for an extension of time
22 to file the opposition in light of the pendency of the Court of Appeals decision.
23 [Doc. 46.] The court granted the motion. [Doc. 47.]

24 On November 18, 2015, the Court of Appeals issued an order, as follows:

25 “Before: REINHARDT, W. FLETCHER, and N.R. SMITH, Circuit
26 Judges.

27 We conclude that the December 17, 2014 order and “judgment”
28 dismissing appellant’s claim without prejudice was not intended to be

1 a final and appealable order. See *Montes v. United States*, 37 F.3d
2 1347, 1351 (9th Cir. 1994) (the “First Judgment” dismissing an action
3 without prejudice “was not intended to be a final and appealable
4 order” where the district court permitted plaintiff to file an amended
5 complaint “after entering the First Judgment”) (emphasis in original).
6 Accordingly, we dismiss this appeal for lack of jurisdiction.
7 DISMISSED.”

8 [Doc 48.]

9 The due date for the opposition to the outstanding motion is today,
10 November 19, 2015.

11 Counsel for the parties have met and conferred and agreed to request that
12 the deadlines be moved.

13 Accordingly, the parties jointly move for an order extending the briefing
14 schedule and hearing date on the Motion to Dismiss.

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1 The parties therefore jointly move for a new briefing schedule as follows:

2 Response to Motion to Dismiss: December 3, 2015

3 Reply to Motion to Dismiss: December 17, 2015

4 Hearing on Motion to Dismiss: **TBD**

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8 Dated: November 19, 2015

Respectfully submitted,

The McMillan Law Firm, APC

9 /s/ Scott A. McMillan

10 _____
11 Scott A. McMillan
12 Attorneys for Plaintiff

13 Office of the U.S. Attorney

14 /s/ Daniel E. Butcher

15 _____
16 Daniel E. Butcher
17 Attorneys for the United States

18 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative Policies
19 and Procedures of the United States District Court for the Southern District of
20 California, I certify that the content of this document is acceptable to counsel for
21 the Defendant and that I have obtained authorization from Daniel E. Butcher to
22 affix his electronic signature to this document.

23
24 /s/ Scott A. McMillan

25 _____
26 Scott A. McMillan
27
28

CERTIFICATE OF SERVICE

I, Scott A. McMillan, am a citizen of the United States, am over the age of eighteen, and not a party to the above entitled action. My business address is 4670 Nebo Drive, Suite 200, La Mesa, CA 91941-5230. I have caused service of the following documents:

**JOINT MOTION FOR EXTENSION OF BRIEFING SCHEDULE ON
DEFENDANT'S MOTION TO DISMISS**

By Electronic Court Service, upon:

U S Attorney CV Efile.dkt.civ@usdoj.gov

Daniel Everett Butcher Daniel.Butcher@usdoj.gov, efile.dkt.civ@usdoj.gov,
yvette.macias@usdoj.gov

I declare under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on the date set forth below.

The McMillan Law Firm, APC

Dated: November 19, 2015

/s/ Scott A. McMillan

Scott A. McMillan
Attorney for Plaintiff
Lycurgan, Inc.